



## MEMORANDUM ENDORSEMENT

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September 4, 2020

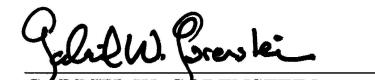
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*Via ECF*

The Hon. Judge Gabriel W. Gorenstein  
Chief U.S. Magistrate Judge  
U.S. District Court, Southern District of New York  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street  
New York, NY 10007-1312

**Application granted.**

**So Ordered.**

  
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GABRIEL W. GORENSTEIN  
United States Magistrate Judge  
September 8, 2020

Re: *U.S. ex rel. Raffington v. Bon Secours Health System, Inc. et al.*  
Docket No. 1:10-cv-09650-RMB-GWG

Dear Judge Gorenstein:

We represent Defendants Bon Secours Health System, Inc., Bon Secours New York Health System, and Schervier Long Term Home Health Care Program (collectively, the “Defendants”). Pursuant to Your Honor’s Individual Rules of Practice, we write to respectfully request that Your Honor permit Defendants to file under seal unredacted copies of the following:

- Exhibit 4 to the Declaration of David Fischer
- Exhibit 5 to the Declaration of David Fischer

Exhibits 4 and 5 to the Declaration of David Fischer include Protected Health Information (“PHI”) of patients and have been designated “confidential” pursuant to the Stipulation and Protective Order signed by the parties and So Ordered by Your Honor on November 5, 2015 (Dkt. #69). A redacted form of these exhibits was publicly filed today, and an unredacted copies of both documents were e-mailed to opposing counsel pursuant to the Stipulation and Protective Order.

Pursuant to the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-101, 110 Stat. 1936 (1996) (“HIPAA”), which imposes certain limitations and requirements upon the handling of PHI, as defined by 45 C.F.R. § 106.103, Defendants have an obligation to protect the PHI contained in the above-listed documents. Further, the Second Circuit has recognized the compelling need to protect the privacy interests of innocent third-parties. *See U.S. v. Amodeo*, 71 F.3d 1044, 1050-51 (2d Cir. 1995). “Such interests . . . are a venerable common law exception

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to the presumption of access.” *Id.*; see also *U.S. v. King*, No. 10-CR-122, [2012 WL 2196674](#), at \*3 (S.D.N.Y. June 5, 2012) (recognizing that the interest in protecting the disclosure of medical records belonging to innocent third parties “overrides any public interest in the disclosures of these materials”). Accordingly, Defendants respectfully request a sealing order so that they might file an unredacted form of each of the above-listed documents under seal.

Pursuant to Your Honor’s rules, Defendants will provide Your Honor with highlighted copies of the subject documents with the courtesy copy of this letter.

Respectfully submitted,



Rena Andoh  
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

cc: Ross Brooks, Esq.

SMRH:4838-2608-9162.2